82-1771

No.

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

ALBERTO ANTONIO LEON, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
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QUESTION PRESENTED

Whether the Fourth Amendment exclusionary rule should be modified so as not to bar the admission of evidence seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective.

PARTIES TO THE PROCEEDING

In addition to the parties shown by the caption of this case, Armando Lazaro Sanchez, Patsy Ann Stewart and Ricardo Albert Del Castillo were appellees below and are respondents here.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-6a) is unreported. The ruling of the district court suppressing evidence (App. D, *infra*, 9a-14a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 19, 1983 (App. B, *infra*, 7a). A petition for rehearing was denied on March 4, 1983 (App. C, *infra*, 8a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

On October 2, 1981, a five-count indictment was returned in the United States District Court for the Central District of California charging all four respondents

with conspiring to possess and distribute cocaine, in violation of 21 U.S.C. 846 (Count I) (E.R. 1-3).[1] In addition, respondents were variously charged in substantive counts with the possession of cocaine (Counts II, III and V) and methaqualone (Count IV) with intent to distribute, in violation of 21 U.S.C. 841(a)(1) (E.R. 4-7). Respondents thereafter moved to suppress contraband and other evidence seized pursuant to a judicial warrant authorizing the search of residences and automobiles belonging to them (E.R. 8-9, 98-99, 108-109, 123-124, 126-127). Following an evidentiary hearing, the district court granted the motions to suppress in part, finding that the search warrant was not supported by probable cause (App. D, *infra*, 10a).[2] The court of appeals affirmed the suppression order, with one judge dissenting (App. A, *infra*, 1a-6a).

1. The affidavit in support of the search warrant contained the following information:[3]

On August 18, 1981, a confidential informant of unproven reliability told Officer Cyril A. Rombach of the Burbank, California, Police Department that two persons whom he knew as "Armando" and "Patsy" were selling large quantities of cocaine and methaqualone (quaaludes) from their residence at 620 Price Drive in Burbank (E.R. 75).[4] In addition, the informant stated

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[1] "E.R." denotes the Excerpts of Record filed in the court of appeals.

[2] Not all of the evidence was suppressed as to all of the respondents because the court held that no single respondent had a legitimate expectation of privacy in all of the places searched (App. D, *infra*, 10a-13a; see also page 7 note 8, *infra*).

[3] For the sake of brevity, only the most pertinent details of the affidavit are recounted here; however, the affidavit contains other information tending to support the existence of probable cause (see E.R. 75-96).

[4] According to the informant, "Armando" sold cocaine in quantities of one-half pound and larger, and "Patsy" sold methaqualone in quantities of 100 tablets and larger (E.R. 75).

that he had been present at the Price Drive residence five months earlier and had seen "Patsy" sell 500 methaqualone tablets *(ibid.)*. At the same time, the informant observed a shoe box containing between $50,000 and $100,000 that belonged to "Patsy." Finally, the informant stated that "Patsy" and "Armando" kept only relatively small quantities of drugs at the Price Drive residence, storing the remainder at another location somewhere in the "hill area" of Burbank *(ibid.)*.

On receipt of this information, Burbank police officers instituted a month-long investigation that first focused on the Price Drive residence and later on residences located at 716 South Sunset Canyon in Burbank and 7902 Via Magdelena in Los Angeles. On August 19, 1981, officers drove to the Price Drive residence and observed automobiles registered to respondents Armando Sanchez and Patsy Ann Stewart parked outside (E.R. 76). Although a records check revealed that Stewart had no prior criminal record, Sanchez had been found with $20,000 in currency at the Miami Airport in 1977, and had been arrested in Miami in December 1978 for possession of marijuana *(ibid.)*.

While surveilling the Price Drive residence on August 24, 1981, officers observed the arrival of an automobile registered to respondent Del Castillo (E.R. 77). A Latin male exited the vehicle, entered the house, and returned to the vehicle ten minutes later carrying a small paper bag. He then drove away. A background check disclosed that in January 1979 Del Castillo had been arrested in Miami for possession of 50 pounds of marijuana while he was attempting to board an aircraft bound for Los Angeles (E.R. 77-78). The telephone number for his employer that Del Castillo had given the probation authorities turned out to be registered to respondent Leon. Leon, in turn, had been arrested in 1980 on cocaine and quaalude charges and in 1979 on quaalude charges (E.R. 78-80). In addition, police offi-

cers were told by a woman who previously had been arrested with Leon that Leon was a drug importer affiliated with the "Cuban Mafia" (E.R. 78-79), and from a second informant that Leon had several thousand quaalude tablets at his residence (E.R. 79). Utility records showed that Leon lived at 716 South Sunset Canyon in Burbank *(ibid.)*.

On August 25, 1981, officers observed Thomas Kilburn enter the Price Drive house and emerge a short while later carrying a paper bag (E.R. 80). The officers determined that Kilburn had been arrested in 1974 for possession of hashish and cultivation of marijuana (E.R. 80-81). On August 26, 1981, the officers observed an unidentified individual enter the Price Drive residence and emerge a short time later carrying a small box (E.R. 81).

On August 28, 1981, officers observed that Del Castillo's vehicle was driven from Price Drive to a condominium at 7902 Via Magdelena. Later that day, Sanchez drove in his vehicle from Price Drive to Leon's Sunset Canyon residence, where Sanchez obtained a small package and returned to Price Drive. Later, an unidentified man drove to the Price Drive residence and entered the house. At about the same time, a man driving Del Castillo's vehicle arrived, ran into the residence, and ran back out immediately. Sanchez then left the Price Drive house, drove to a neighboring town, parked his car, and entered an unknown house. Before surveillance was lost, Sanchez was observed returning to his car with a large rectangular container (E.R. 81-83).

On September 8, 1981, officers were surveilling a house as part of another drug investigation. They observed Patsy Stewart drive up to the house. A female left the house and entered Stewart's vehicle. One minute later, she returned to the house carrying a small paper sack. Later that day, the occupants of that house

were arrested for purchasing amphetamines from persons not related to this case (E.R. 83-84).

On September 11, 1981, the officers saw Sanchez and Stewart drive to the Los Angeles airport, where Sanchez, carrying only a small briefcase and a garment bag, boarded a flight for Miami (E.R. 84-85). Four days later, Stewart was driven to the airport in Del Castillo's automobile. Visibly upset when told that she could not carry a large suitcase on the plane with her, Stewart checked the bag and boarded a flight for Miami (E.R. 87-88). Stewart and Sanchez both returned to Los Angeles on September 19, 1981. Although they had been seated together on the plane, Stewart and Sanchez deplaned and walked through the terminal separately; they rejoined one another only near the exit to the terminal. The pair carried many pieces of carry-on luggage, most of which they had not taken to Miami. And, although they had checked at least one piece of luggage in Miami, they did not pick up any checked luggage in Los Angeles. Nor did either of them have the large suitcase that Stewart had taken with her to Florida (E.R. 90-91). As they were entering a taxi, the two were approached by airport narcotics officers who conducted a consensual search of their luggage. A small amount of marijuana was found (E.R. 91).

In the early morning hours of September 19, 1981, the officers saw a silver Chevrolet that was registered to Sanchez parked in front of Leon's house on Sunset Canyon. The vehicle was later seen at the Price Drive residence (E.R. 91-92). The officers then went to 7902 Via Magdelena, where they observed the interior lights on. This was the first time since the beginning of the investigation that the officers had seen any sign of occupancy at the condominium.[5] Two days later, on Septem-

[5] Investigation showed that the utilities at the Via Magdelena condominium were listed in Stewart's name, but that there was no telephone service (E.R. 89)

ber 21, Sanchez' automobile was observed parked outside the condominium (E.R. 92).

From these observations, Officer Rombach concluded that respondents were engaged in an on-going criminal enterprise involving the transportation and distribution of controlled substances (E.R. 96).[6] In addition, Officer Rombach opined that the Via Magdelena condominum was being used as a "stash pad" to store large quantities of narcotics that were then transported in smaller amounts to respondents' residences for distribution (E.R. 89).[7]

2. Based on this information, a state superior court judge issued a warrant on September 21, 1981, authorizing the search of the residences at 620 Price Drive and 716 South Sunset Canyon, the condominium at 7902 Via Magdelena and automobiles registered to Sanchez, Stewart, Leon and Del Castillo (E.R. 65-69). In an ensuing series of searches, police officers seized more than four pounds of cocaine and 1,165 quaalude tablets at the Via Magdelena condominium, nearly a pound of cocaine at Leon's house on Sunset Canyon, and about an ounce of cocaine at the Price Drive residence of Stewart and Sanchez. The officers additionally found paraphernalia for testing, cutting and packaging cocaine, scales, a police radio and large amounts of currency (E.R. 48-64). Finally, a search of Stewart's automobile produced two garage door openers—one for the Price Drive residence and one for the Via Magdelena

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[6] Officer Rombach based his opinion on the observed behavior of the suspects assessed in light of both personal experience as a narcotics officer and specialized training in narcotics investigations (E.R. 94-95).

[7] Officer Rombach averred that major drug dealers most often store large quantities of drugs at locations other than their primary residences to minimize the risk of seizure if their activities are detected (E.R. 89).

condominium—while a search of Del Castillo's automobile revealed a small amount of marijuana residue.

3. The district court suppressed the seized evidence, finding that there was "no question" that the reliability and credibility of the informant had not been established (App. D, *infra*, 10a). Although recognizing that "[s]ome details * * * tended to corroborate" the informant's information, the court concluded that such details either corroborated information about a stale transaction or were "as consistent with innocence as * * * with guilt" *(ibid.)*. Accordingly, the court found that the search warrant was not supported by probable cause.[8]

The district court rejected the government's argument that the exclusionary rule should not apply when evidence is seized in reasonable, good-faith reliance on a search warrant (App. D, *infra*, 14a). In so doing, however, the district court specifically noted *(ibid.)*:

> I will say certainly in my view, there is not any question about good faith. He [Officer Rombach] went to a Superior Court judge and got a warrant; obviously laid a meticulous trail. Had surveilled for a long period of time, and I believe his testimony—and I think he said he consulted with three

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[8] The district court rejected respondents' additional claims that the description of the items to be seized in the search warrant was impermissibly overbroad and that the officers had failed to comply with the California "knock-and-announce" rule during the execution of the warrant (App. D, *infra*, 9a-10a). Moreover, the court held that only Sanchez and Stewart had a sufficient expectation of privacy to challenge the search of the Price Drive residence; that only Leon had a sufficient expectation of privacy to challenge the search of the Sunset Canyon residence; and that only Stewart and Del Castillo had a sufficient expectation of privacy to challenge the searches of their respective automobiles (*id.* at 10a-13a). No one, in the district court's view, was entitled to challenge the search of the Via Magdelena condominium (*id.* at 11a).

Deputy District Attorneys before proceeding himself, [redacted] and I certainly have no doubt about the fact that that is true.

4. On appeal, a panel of the Ninth Circuit affirmed the suppression order, with one judge dissenting. The majority held that the only portion of the affidavit that adequately set forth facts to demonstrate the informant's knowledge of criminal activity—the informant's personal observation of "Patsy's" distribution of drugs—was fatally stale (App. A, *infra*, 3a). The majority further held that the information supplied by the informant was inadequate under both prongs of the *Aguilar-Spinelli* test[9] and that the month-long independent police investigation was insufficient either to corroborate the informant's information or to revive the stale information (App. A, *infra*, 3a). Finally, the majority flatly declined to recognize a "good-faith" exception to the exclusionary rule (*id.* at 4a).

In dissent, Judge Kennedy observed that "[t]he affidavit for the search warrant sets forth the details of a police investigation conducted with care, diligence, and good faith" (App. A, *infra*, 5a). Judge Kennedy concluded that the informant's information was both adequately corroborated and sufficiently current in view of the month-long surveillance, which had revealed to experienced investigators a continuous pattern of conduct that "was quite inconsistent with any explanation other than illegal drug activity" *(ibid.)*.

5. The government petitioned the panel for rehearing, suggesting that the case be held pending this Court's decision in *Illinois* v. *Gates*, No. 81-430 (reargued Mar. 1, 1983). The petition was denied, again over Judge Kennedy's dissent (App. C, *infra*, 8a).

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[9] *Spinelli* v. *United States*, 393 U.S. 410 (1969); *Aguilar* v. *Texas*, 378 U.S. 108 (1964).

REASONS FOR GRANTING THE PETITION

This case raises precisely the same issue that is now pending before the Court following the reargument in *Illinois* v. *Gates*, No. 81-430 (reargued Mar. 1, 1983).[10] We have set forth at some length our arguments in support of a "reasonable mistake" exception to the exclusionary rule in *Gates*, and no purpose would be served by repeating them here.[11]

As noted in our supplemental brief in *Gates* (at 39-40), the Court has never articulated any rationale for applying the exclusionary rule to suppress evidence obtained pursuant to a search warrant; it has simply done so without discussing the policies to be served. Thus, in *Gates* or, alternatively, in the present case, the Court is presented with its first real occasion to examine the policies of the exclusionary rule as they relate to evidence obtained pursuant to a warrant. This question is of fundamental importance to the administration of criminal justice and, in the event the issue is not resolved in *Gates*, it should be examined by the Court in this case. Accordingly, this case will either be controlled by the decision in *Gates* or it will present a suit-

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[10] As in *Gates*, this case also presented the issue whether the search warrant was supported by probable cause. Although we believe that the lower courts were clearly in error in holding that probable cause was lacking in this case, we do not seek this Court's review on that issue. The probable cause issue is fact-bound and not independently worthy of this Court's consideration, particularly in light of the court of appeals' decision not to publish its opinion. We note, however, that the district court thought the question was close, observing that this was "a good case to appeal" (Jan. 11, 1981 Tr. 97), and that the court of appeals was sharply divided on the issue (App. A, *infra*, 1a-6a).

[11] We are furnishing respondents' counsel with copies of our supplemental brief in *Gates* (filed Jan. 13, 1983), in which those arguments are set forth.

able independent vehicle for the resolution of issues that may not be decided in *Gates*.

CONCLUSION

The petition for a writ of certiorari should be disposed of as appropriate in light of the Court's decision in *Illinois* v. *Gates*, No. 81-430.

Respectfully submitted.

REX E. LEE
Solicitor General

APRIL 1983

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 82-1093
D.C. #CR 81-907

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT,

v.

ALBERTO ANTONIO LEON, ET AL.,
DEFENDANTS-APPELLEES.

Appeal from the United States District Court
for the Central District of California
Wallace A. Tashima, District Judge, Presiding
Argued and submitted October 7, 1982

[Filed Jan. 19, 1983]

Before: KENNEDY, TANG AND FERGUSON, Circuit Judges.

The defendants are charged with violations of 21 U.S.C. § 846 (conspiring to possess and distribute cocaine) and 21 U.S.C. § 841(a)(1) (possessing methaqualone and cocaine with intent to distribute it). The defendants filed pretrial motions in the district court to suppress evidence obtained by police officers pursuant to a search warrant issued by a state judge, arguing that the affidavit supporting the warrant made an insufficient showing of probable cause. The district court granted the motions in part, holding that the affidavit given in support of the warrant was inadequate. The government brings this interlocutory appeal challenging the district court's determination. We affirm.

The government raises three issues on appeal: (1) whether the independent examination standard is applicable to appellate review of a district court's conclusion that an affidavit does not establish probable cause for the issuance of a search warrant; (2) whether the district court erred in concluding that the search warrant affidavit failed to establish probable cause; and (3) whether the evidence seized under an invalid search warrant should be suppressed if the police acted in good faith.

In *United States* v. *Chesher*, 678 F.2d 1353 (9th Cir. 1982) this court recognized that a determination of whether an affidavit is sufficient to establish probable cause for the issuance of a search warrant is a question of law. *Id.* at 1359. Accordingly, we may make an independent examination of the propriety of such a determination. *See, e.g., United States* v. *One Twin Engine Beech Airplane, Etc.*, 533 F.2d 1106, 1108-09 (1976).

We have independently examined the probable cause issue, and conclude that the district court correctly decided that the affidavit failed to establish probable cause sufficiently. In seeking the search warrant, the affiant relied upon the assertions of informants and independent police investigation. The information from the informants and that obtained during the investigation did not provide sufficient cause for a search of any of the structures identified in the warrant.

We consider first the propriety of the authorization to search the Price Drive residence of Sanchez and Stewart. Where an affiant relies on information provided by an informant the affidavit must first, give facts to show the reliability of the information and second, give facts to support the credibility of the informant. *Spinelli* v. *United States*, 393 U.S. 410 (1969); *Aguilar* v. *Texas*, 375 U.S. 108 (1964); *United States* v. *Johnson*, 641 F.2d 652 (9th Cir. 1980).

The affiant adequately set forth facts to permit the judicial officer making the probable cause determination to determine the basis of the informant's knowledge of the criminal activity which occurred at the Price Drive residence. However, the information was over five months old. The long delay between the informant's acquisition of the particular information and the search negates the inference of probable cause. *Durham* v. *United States*, 403 F.2d 190, 195 (9th Cir. 1968). Neither are we satisfied that the independent police investigation uncovered any evidence of ongoing criminal activity at the residence which would tend to cure the staleness defect. *Cf. United States* v. *Huberts*, 637 F.2d 630, 638 (9th Cir. 1980), *cert. denied*, 451 U.S. 975 (1981). As the district court observed, the police observations were as indicative of innocence as of guilt.

The affidavit was also insufficient in that it failed to establish the credibility of the informant. *Aguilar* v. *Texas*, 378 U.S. at 114. The independent police investigation did not produce information which corroborated the details of the informant's information. *Cf. United States* v. *Johnson*, 641 F.2d 652, 658-59 (9th Cir. 1980).

The affidavit satisfied neither prong of the *Aguilar-Spinelli* test. Thus, the district court properly ruled that the evidence derived from the search conducted at the Price Drive residence should be suppressed.

The affidavit is clearly deficient in providing justification to search Leon's Sunset Canyon residence. One informant told police 17 months before the search that Leon was involved with the "Cuban Mafia" and that he participated in the importation of drugs into this country. Another informant told police that Leon had a quantity of quaaludes at his residence. The affidavit is devoid of any factual circumstances indicating the basis of these statements. Moreover, the affidavit completely fails to establish the veracity of either informant. Again, the independent police investigation did not un-

cover information sufficient to cure any of these defects. Thus the district court correctly ordered the suppression of evidence discovered as a result of the Sunset Canyon search.

Finally, the government invites us to follow the lead of the Fifth Circuit and recognize a "good faith" exception to the exclusionary rule. *United States* v. *Williams*, 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981). We have not heretofore recognized such an exception and we decline the invitation to recognize one at this juncture.

AFFIRMED.

Re: *United States* v. *Leon* —No. 82-1093

KENNEDY, Circuit Judge, dissenting:

The majority opinion states the law correctly, but, I respectfully submit, it misapplies controlling legal principles to the facts of the case.

The affidavit for the search warrant sets forth the details of a police investigation conducted with care, diligence, and good faith. It is true that the informant whose tip started the investigation had seen drugs in the house five months previously; but what the officers observed when surveillance began, together with the information obtained on the persons using the residences in question, was quite inconsistent with any explanation other than illegal drug activity. Known narcotics violators visited the principal residence in question for ten minutes or so, and would exit with a brown paper bag, usually placed in an automobile trunk. One of the persons suspected of being a principal supplier had previously been arrested for a Miami-Los Angeles transportation of drugs, and the occupants of this house traveled between those cities during this investigation.

The informant's observation pertained to ongoing criminal activity, not simply a single criminal act that was not likely to be repeated. Staleness is less significant where the activity is continuous. *See United States* v. *Huberts*, 637 F.2d 630, 638 (9th Cir. 1980), *cert. denied*, 451 U.S. 975 (1981).

Information in a warrant is not stale if the continuing course of suspicious conduct validates the information given at the outset. *See United States* v. *Huberts*, *supra*. That same course of conduct serves to corroborate the reliability of the informant.

One does not have to read many cases involving illegal drug traffic before it becomes clear exactly what was going on at the residences described by the officer's affidavit. The investigation described in the affida-

vit was made by a law enforcement officer with intensive training in the investigation of drug traffic. He had made over five hundred arrests. His opinion that drug trafficking was going on is itself entitled to weight, though the specific factual allegations taken alone also support the inference. The magistrate did not err, I submit, in issuing the warrant.

Whatever the merits of the exclusionary rule, its rigidities become compounded unacceptably when courts presume innocent conduct when the only common sense explanation for it is on-going criminal activity. I would reverse the order suppressing the evidence.

APPENDIX B

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered in this case as of the file stamp date [Jan. 19, 1983] on the attached decision of the Court.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 82-1093
D.C. No. CR 81-907

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT,

v.

ALBERTO ANTONIO LEON, et al.,
DEFENDANTS-APPELLEES.

[Mar. 4, 1983]

ORDER

Before: KENNEDY, TANG and FERGUSON, Circuit Judges.

The Petition for Rehearing is denied.

Judge Kennedy would grant the Petition for Rehearing but hold the case on the calendar until the Supreme Court's ruling in *Illinois* v. *Gates*.

APPENDIX D

RULING OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ON DEFENDANTS' MOTION TO SUPPRESS EVIDENCE

January 11, 1982

* * * * *

I might have forgotten, but my memory of Michgan v. Summers was that someone was leaving the place to be searched. But, in any event, we have more than Michigan v. Summers.

In this case, we have specific evidence relating to Mr. Leon. We have glassy eyes; someone who can't hold himself erect correctly, and someone who has a white powder around his nose; and the trained narcotics officer comes to the conclusion he has just taken cocaine—just committed a crime.

I would respectfully request it is correct. I hope that just about everything else is alluded to in my papers, and, if so, I'll sit down.

THE COURT: I do not have any questions.

All right. There are a number of motions here to suppress. I have reviewed the papers and listened to the testimony, and I am ready to rule right now. So get your pencils out.

I am going to dispose of the collateral issues first, the ones not too difficult.

First of all, I seriously doubt whether the California knock-notice statute applies to this case; even assuming it does, I find from the record that the statute was not violated.

With reference to the overbreadth argument, in a case like this with respect to conspiracy, I don't think

the warrant on conspiracy is overbroad, so I deny that argument.

With respect to the warrant itself, I read it several times, considered the affidavits and the other factors involved. I just cannot find this warrant sufficient for a showing of probable cause.

I think it is somewhere between Spinelli and Valenzuela, and probably leans toward Spinelli.

There is no question of the reliability and credibility of the informant as not being established.

Some details given tended to corroborate, maybe, the reliability of his information about the previous transaction, but if it is not a stale transaction, it comes awfully close to it; and all the other material I think is as consistent with innocence as it is with guilt.

The material referring to the other information with respect to the defendant Leon, I think is about in the same category.

If he was the one the information came from, the Police Department; but again that is information from some informant about which we know nothing.

So I just do not think this affidavit can withstand the test. I find, then, that there is no probable cause in this case for the issuance of the search warrant, which gets me to the next question of standing.

I think it is pretty clear in this case, in this Circuit, that standing is determined by federal law. I do not believe U.S. v. Cella has been overruled; in fact, I think it has been confirmed in U.S. v. Portilla, 633 Fed. 2d. 1313, 1980, which confirms that the standing rule still is to be determined by federal standards. First, with respect to I think the search of 620 Price Drive, those people who I think have standing to contest validity of that search because they have a legitimate expectation of privacy at 620 Price Drive, would be the defendants Sanchez and Stewart who have established, I think,

without contradiction, that that is their primary residence.

With respect to the search at 716 South Sunset Canyon, defendant Leon has established that that is his residence; that he is the owner of that place. So I suppress the fruits of that search, including the search of his person.

There may have been probable cause to arrest him for some state law possession of cocaine or something like that, but that was directly the result of his being detained in the course of the execution of the search warrant. So he was detained because the search warrant was being executed, and all of these other matters flowed from that detention.

So he is entitled to suppress the search of the Sunset Canyon residence.

With respect to the condominium at Via Magdalena, there is no evidence of any possessory interest. The only thing that comes close is the declaration of Patsy Ann Stewart that declares that she paid the utility bills at 7902 Via Magdalena, and had paid them for the month of September.

I don't think that is sufficient to establish a legitimate expectation of privacy.

For several years I paid the dormitory fees for my children, and I do not think I have any expectation for privacy in their dormitory rooms. So, on that standing alone, that does not give rise to an expectation of privacy.

So I find no one has standing to contest the search of 7902 Via Magdalena. So nothing uncovered there is entitled to be suppressed by these defendants.

With respect to the safe deposit box, I think that flows directly when the search of the Price Drive home, it is the direct fruit of that home—at least the key was—and, for that reason, I do not think there is any

attenuation or anything like that; so, for that reason, the results of that search should be suppressed.

So, whatever was discovered in the safe deposit box is ordered suppressed.

With respect to the automobiles, I do not know what the state of the record is. It is almost hard to tell what was searched, I would say first.

Is this correct that the Government does not intend to introduce any evidence with respect to the search of Sanchez's car? Was that the representation made in the papers?

MR. DAVIDSON: If I may have a moment, your Honor.

THE COURT: Yes.

(Mr. Davidson conferring with his case agent.)

MR. DAVIDSON: That was a correct representation, your Honor.

THE COURT: You intend to introduce evidence as a result of searches of other cars, do you not?

MR. DAVIDSON: Yes, your Honor, as to—

THE COURT: Tell me what that is.

MR. DAVIDSON: As to Mr. Del Castillo's car, there was some residue of marijuana, I believe in the trunk.

THE COURT: All right. Tell me what else.

MR. DAVIDSON: In Miss Stewart's car, there were two garage door opener transmitter devices, and one of them was the garage door opener for the Via Magdalena address.

And as to Mr. Leon's car, if I could have just one moment.

(Mr. Davidson and the agent confer further.)

There would be only two cars, your Honor—Mr. Del Castillo's car and Miss Stewart's car.

THE COURT: With respect to the fruits of those searches, I am going to suppress the results of the search because I think it's been directly—no attenuation, but again only with respect to the persons who as-

serted an interest in the automobiles; namely, Don Castillo in his own car, and Stewart in her car.

Did I leave anything out?

MR. ABZUG: Your Honor, the only thing I want to clear up for the record, as I indicated in my motion, I am also moving to suppress as a result of the arrest of Mr. Sanchez the statement he gave subsequently to the DEA as a fruit of the unlawful search.

THE COURT: Yes. That statement to me, I don't have any exception to that, so that is suppressed.

MR. ABZUG: Very well, your Honor. Thank you.

MR. COSSACK: I would ask suppression of the statement that Miss Stewart gave also, your Honor.

THE COURT: Well, Mr. Davidson, given the ruling on the warrant, do you know of any exception to suppression of the statement? I cannot think of any.

MR. DAVISON: Well, let me put it this way, you know.

I know of no difference in the facts between Mr. Sanchez and Miss Stewart.

THE COURT: Then I will also suppress the statement given by Miss Stewart in execution of the warrant.

* * * * *

I would ask, however, if either the Court would make a finding with respect to the good faith issue that the officers acted in good faith, or at least a finding, which I think is amply supported by the record on the absence of any bad faith on the part of the policemen executing the warrant.

THE COURT: First of all, let me ask you this: You recall I made some statements generally yesterday on the record when I ruled on the motion. I guess to the extent findings are useful, those would be considered findings.

I don't intend to do anything in writing. I have not requested any party to submit a proposed finding, unless somebody thinks it is necessary.

On the issue of good faith, obviously that is not the law of the Circuit, and I am not going to apply that law.

I will say certainly in my view, there is not any question about good faith. He went to a Superior Court judge and got a warrant; obviously laid a meticulous trail. Had surveilled for a long period of time, and I believe his testimony—and I think he said he consulted with three Deputy District Attorneys before proceeding himself, and I certainly have no doubt about the fact that that is true.

MR. DAVIDSON: I understand, your Honor. Thank you.